

## **DIVISION 25**

### **INTERIM INCLUSIONARY HOUSING PROGRAM**

#### **Chapter 25.200 Interim Inclusionary Housing Program**

#### ***ARTICLE 1. GENERAL PROVISIONS***

##### **Sec. 25.200.110. Findings.**

The City Council finds that an inclusionary housing program is a necessary and desirable program for the following reasons:

1. The City Council finds that the City of San Buenaventura and the Southern California region face a serious housing problem and the lack of access to affordable housing has a direct impact upon the health, safety, and welfare of the residents of the City; and
2. The California Legislature has consistently recognized the continuing need for affordable housing in California, stating in Government Code Section 65580, that "the availability of housing is of vital statewide importance, and the early attainment of decent housing ... is a priority of the highest order" and, further, that, "local ... governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community."; and
3. Affordable housing is regulated by a variety of state and local laws, ordinances, and policies, and the Regional Housing Needs Assessment (RHNA) has established that the City's Housing Production allocation requires the development of 2,125 new affordable housing units as follows: 673 units (32 percent) are needed for moderate-income, 591 units (28 percent) are needed for low-income and 861 units (40 percent) are needed for very low-income during the current 2014-2021 allocation cycle; and
4. The City will not be able to meet its mandated regional housing goals if it does not establish programs adequate to promote development of housing that is affordable to very low-, low- and moderate-income households; and
5. A lack of new units affordable to very low-, low- and moderate-income households within the City will have a substantially negative impact because: (1) housing will have to be built far from employment centers, which will increase commuting and negatively impact traffic, air and noise pollution, and (2) the City and employers within the City will find it difficult to recruit and retain employees; and
6. The City Council has considered the findings of the Inclusionary Housing Study dated June 7, 2006, received by the City Council on June 12, 2006, and has determined that new development contributes to the need for the affordable housing; and
7. Approximately 63 percent of the households in Ventura presently make at or below moderate income; and
8. The State of California requires each city to develop a general plan establishing policies for future development. As specified in the Government Code, the general plan must: (i) encourage the development of a variety of housing types for all income levels; (ii) assist in the development of

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adequate housing to meet the needs of low- and moderate-income households; and (iii) conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action; and

9. Program 16 of the City's adopted Housing Element requires that the City evaluate the adoption and implementation of an inclusionary housing ordinance requiring a given percentage of units within new market-rate developments be price-restricted to very low-, low- and moderate-income categories; and
10. The adoption of an inclusionary housing requirement in conjunction with the Housing Approval Program, will provide a mechanism for all residential development containing 15 or more units to provide their fair share of affordable housing consistent with the City's adopted Housing Element; and an inclusionary program will aid the City in achieving the goal of making affordable housing diverse, dispersed and inclusionary; and
11. The City Council further finds that the City of San Buenaventura faces a lack of access to decent, affordable housing, which has a direct impact upon the health, safety and welfare of its residents, and
12. An affordable inclusionary housing requirement for all new developments containing 15 or more residential units, in the City of Ventura, exclusive of the Merged Downtown Redevelopment Project Area, will serve to implement at the local level the requirements of inclusionary affordable housing in the coastal zone, and contribute to meeting the City's overall future need of affordable housing and to help meet its RHNA allocations.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.115. Purpose and intent.**

1. Ensure the development and availability of decent, affordable housing to a broad range of households with varying income levels throughout the City.
2. Promote the City's goal to add affordable housing units to the City's housing stock.
3. Ensure the long-term affordability of units and availability for income-eligible households in years to come.
4. Ensure that the private sector, in addition to public sector, participates in the provision of affordable housing for workers within the City of Ventura.
5. Adopting the affordable inclusionary requirement for each applicable development will ensure that affordable housing will be dispersed throughout the City and throughout each project and not be segregated from market-rate housing.

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 2. DEFINITIONS***

#### **Sec. 25.200.210. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Affordable Housing Agreement.* A legally binding agreement between an applicant and the City, a Declaration of Restrictions or other equivalent documents, in a form and substance satisfactory to the Director and City Attorney and suitable for recording, and setting forth those provisions necessary to

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ensure that the requirements of this Chapter are, and will continue to be, satisfied and otherwise meeting the requirements of this Chapter.

2. *Affordable Rent.* Affordable rent herein shall have the same meaning as specified in Health and Safety Code Section 50053.
3. *Area Median Income.* The median household income as provided in Health and Safety Code Section 50093(c).
4. *Community Development Director.* The City of Ventura Community Development Director or designee.
5. *Eligible Household* means any of the following as applicable:
  - Eligible Moderate-Income Household.* A household whose income does not exceed 110 percent of the Area Median Income, adjusted for family size.
  - Eligible Low-Income Household.* A household whose income does not exceed the low-income limit established for Ventura County by the Department of Housing and Urban Development, adjusted for family size.
  - Eligible Very Low-Income Household.* A household whose income does not exceed the very low-income limit established for Ventura County by the Department of Housing and Urban Development, adjusted for family size.
6. *Eligible Organization.*
  - (a) A government entity; or
  - (b) A nonprofit corporation or nonprofit organization, or charitable organization as defined by applicable state or federal law.
7. *Household.* One person living alone or two or more persons sharing residency whose income is considered for housing payments.
8. *Inclusionary Unit.* A dwelling unit that is designated to meet the 15 percent inclusionary housing requirement, and that must be made available offered at an affordable housing cost to moderate-, low- and very low-income households.
9. *Market-rate Unit.* A dwelling unit in a residential development that is not an inclusionary unit.

(Ord. No. 2018-011, § 5, 5-7-18)

### **ARTICLE 3. INCLUSIONARY HOUSING PROGRAM**

#### **Sec. 25.200.310. Inclusionary requirement and method of calculation.**

Development projects consisting of 15 or more residential units, located or proposed to be located in any portion of the City's Planning Area other than the Merged Redevelopment Project Area, shall provide and designate a certain percentage of the total units as Inclusionary Housing Units (inclusionary units) restricted to occupancy by moderate-, low-, or very low-income households, as set forth below. For purposes of calculating the number of inclusionary units required, any additional units authorized as a density bonus under the City Density Bonus Ordinance or State law will not be counted in determining the required number of inclusionary units.

- (a) *Projects containing 59 units or less.* Projects containing 59 units or less shall provide and designate the requisite number of Inclusionary Units as set forth in the following table:

Total number of units	Number of Inclusionary Units Required
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15 — 20	1
21 — 26	2
27 — 33	3
34 — 39	4
40 — 46	5
47 — 53	6
54 — 59	7

For projects containing 59 units or less, the inclusionary requirement shall be met by assigning inclusionary units on a rotational basis in the following order, one moderate, then one low, then one very low, until the required number of inclusionary units has been satisfied. Alternatively, a project containing 59 units or less can meet the requirements of this program by providing the required number of inclusionary units as set forth in the table above solely as low income units. Notwithstanding the foregoing, this formula is not intended to preclude a project from meeting its inclusionary requirement by providing all required inclusionary units at lower income categories than required by this subsection.

- (b) *Projects containing 60 units or more.* Projects containing 60 units or more, shall provide and designate 15% of the total number of units as inclusionary units restricted to occupancy by moderate-, low-, or very low-income households inclusionary units. In determining the number of whole inclusionary units required, any decimal fraction shall be rounded down to the nearest whole number.

The inclusionary requirement shall be met by assigning inclusionary units on a rotational basis in the following order, one moderate, then one low, then one very low, until the required number of inclusionary units has been provided. Alternatively, a project of 60 units or more can meet the requirements of this program by providing ten percent inclusionary units in the very-low income category, 15 percent inclusionary units in the low-income category, or 20 percent inclusionary units in the moderate income category, provided that, this formula is not intended to preclude a project from meeting its inclusionary requirement by providing all required inclusionary units at lower income categories than required by this subsection.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.315. Affordability requirement.**

Inclusionary units produced under this program must be legally restricted to: occupancy by households of the income levels for which the units are designated at the time of entering into the affordable housing agreement as required herein.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.320. Design.**

Unless otherwise specified by the decision-making authority, inclusionary units must be dispersed throughout a residential development and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Inclusionary units must be equivalent in terms of number of bedrooms to the corresponding housing type of market-rate units, but may be smaller in aggregate size, and have different interior finishes and features than market-rate units, so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

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(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.325. Timing of inclusionary development.**

All inclusionary units must be constructed and occupied concurrently with or prior to the construction and occupancy of market-rate units. In phased developments, inclusionary units may be constructed, offered for sale and occupied in proportion to the number of units in each phase of the Residential Development.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.330. Access to common amenities.**

Residents and tenants of inclusionary units shall be provided the same rights and access to common amenities in the development project as residents and tenants occupying market-rate units.

(Ord. No. 2018-011, § 5, 5-7-18)

***ARTICLE 4. EXEMPTIONS***

**Sec. 25.200.410. Exemptions.**

The requirements of this Chapter do not apply to:

1. Residential developments of 14 housing units or less.
2. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by 15 or more.
3. Residential building additions, repairs or remodels; provided that such work does not increase the number of existing units by 15 or more.
4. Projects, or portions of projects, consisting of rental apartment units.

(Ord. No. 2018-011, § 5, 5-7-18)

***ARTICLE 5. INCENTIVES AND ASSISTANCE***

**Sec. 25.200.510. Refund of fees for inclusionary units.**

A pro-rata refund of the following fees for each of the inclusionary units in the residential development will be granted to the developer upon recordation of the affordable housing agreement as required by section 25.200.635, Recording of affordable housing agreement:

Housing Approval Process Fee

Planned Development Permit Fees

Variance Fee

Coastal Development Permit Fee

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Tentative Subdivision Map Fee  
Design Review Fee  
Environmental Review  
Development Agreement  
Annexation  
Change of Zone  
(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.515. Other incentives.**

Depending on the number of inclusionary units provided, an applicant may be eligible for one or more other regulatory incentives set forth in section 24.445.120 of this Code as it may be amended from time to time.  
(Ord. No. 2018-011, § 5, 5-7-18)

***ARTICLE 6. COMPLIANCE PROCEDURES***

**Sec. 25.200.610. General.**

No residential development subject to this program shall be deemed approved without approval of an Inclusionary Housing Plan and approval of an affordable housing agreement as provided herein.  
(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.615. Housing approval program.**

The applicant for a residential project subject to this chapter shall submit a Preliminary Inclusionary Housing Plan for review in conjunction with an application for a Housing Approval (HAP) prequalification determination. The preliminary Inclusionary Housing Plan shall be a separate plan sheet and must include:

1. The location, proposed housing type (e.g. carriage, side yard, etc.) number of bedrooms and size of the proposed market-rate and inclusionary units.
2. A site plan depicting the location of the inclusionary units. For multistory projects, each story with associated inclusionary unit(s) must be depicted separately.
3. A mathematical calculation of compliance with the requirements of the inclusionary housing program, and the income levels to which each inclusionary unit will be made affordable, and indicate which units are intended to be owner-occupied, and which units are intended to be rental.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.620. Discretionary and design review approvals.**

The applicant for a residential project subject to this chapter shall submit a Final Inclusionary Housing Plan in conjunction with its application for any discretionary planning approvals and/or design review approval

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(hereinafter collectively referred to as "discretionary approvals"). The Inclusionary Housing Plan shall be a separate plan sheet and must include:

1. All information required in section 25.200.615.
2. A floor plan and elevations of all proposed inclusionary units.
3. For phased development, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development.
4. A request for any fee waiver pursuant to section 25.200.510.
5. Any other information reasonably requested by the Community Development Director to assist with evaluation of the plan under the requirements of this ordinance.
6. Acknowledgement that an instrument as specified by the City restricting the inclusionary unit(s) as affordable shall be recorded against each inclusionary unit and that a recordable affordable housing agreement shall be entered into by the applicant and any other necessary party.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.625. Approval of inclusionary housing plan.**

- a. *HAP determination.* As a part of the prescreen determination; the preliminary Inclusionary Housing Program will be evaluated for compliance with this program.
- b. *Discretionary approvals.* In conjunction with the processing of any discretionary approvals. The Community Development Director must approve, conditionally approve, or reject the Inclusionary Housing Plan within 60 days of the date that the Inclusionary Housing Plan is deemed complete by the Community Development Director. If the Inclusionary Housing Plan is incomplete, the Inclusionary Housing Plan will be returned to the applicant along with a list of the deficiencies or the information required. A rejected Inclusionary Housing Plan may be resubmitted when and if the defects cited by the Director as reasons for rejection are corrected. An application for discretionary approvals from a residential development subject to this ordinance will not be deemed complete until a complete Inclusionary Housing Plan is submitted to the City. At any time during the review process, the Community Development Director may require from the applicant to submit additional information reasonably necessary to clarify and supplement the Inclusionary Housing Plan or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this ordinance.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.630. Form of restrictions.**

The forms of the affordable housing agreement and any related declarations, resale restrictions, deeds of trust, and other documents authorized by this section shall be in a general form as prescribed by the City, and shall be approved by the Community Development Director and approved as to form by the City Attorney prior to being executed with respect to any residential development subject to this program.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.635. Recording of affordable housing agreements.**

Affordable housing agreements approved by the City must be recorded against inclusionary units prior to the issuance of any building permit for the project. Resale restrictions, deeds of trust, and/or other documents

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comprising or related to the affordable housing agreements specified by the Community Development Director must also be recorded against owner-occupied inclusionary units.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.640. Building permits.**

The City shall not issue a building permit for a residential development subject to this program without an affordable housing agreement executed by the owner, the applicant (if not the owner) and the City Manager, and approved as to form by the City Attorney, and recorded against the property.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.650. Implementation and compliance monitoring fees.**

- (a) The City Council may, by resolution, establish fees and deposits for the reasonable cost of preparing documents and processing applications as required for the inclusionary housing program established pursuant to this Chapter.
- (b) The City Council may, by resolution, additionally establish compliance monitoring fees to recover the City's reasonable costs for ongoing implementation of this Chapter. The City Council shall establish separate compliance monitoring fees for owner-occupied and rental inclusionary units.

(Ord. No. 2018-011, § 5, 5-7-18)

### ***ARTICLE 7. RESTRICTIONS ON MODERATE- AND LOW-INCOME OWNER-OCCUPIED UNITS***

#### **Sec. 25.200.710. Offer for sale required.**

Unless determined otherwise by the Community Development Director, all moderate-income units required by this program shall be offered for sale as owner-occupied housing, unless it can be demonstrated by the applicant that development of owner-occupied housing would create an undue burden on the development, or render it infeasible. At the applicant's discretion it may also offer low-income units for sale as owner-occupied housing to qualified low-income households instead of offering them as rentals.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.715. Initial sales price and resale.**

The initial sales price and resale price of the inclusionary unit will be a price established by the City on an annual basis.

(Ord. No. 2018-011, § 5, 5-7-18)



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### **Sec. 25.200.720. Transfer.**

A resale restriction will be entered into on each change of ownership of for sale units, to maintain the household income restriction on the inclusionary unit prior to the expiration of the affordability period provided in section 25.300.325.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.725. Changes in title.**

Upon the death of one of the owners, title in the inclusionary unit may transfer to the surviving joint tenant without respect to the income-eligibility of the household. Upon the death of a sole owner or all owners and inheritance of the inclusionary unit by a non-income-eligible child or stepchild of one or more owners, there will be a one-year compassion period between the time when the estate is settled and the time when the inclusionary unit must be sold to an income-eligible household. Inheritance of an inclusionary unit by any other person whose household is not income-eligible shall require resale of the unit to an income-eligible household as soon as is feasible but not more than 180 days from when the estate is settled.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.200.730. Owner occupancy required.**

All moderate-income and low-income inclusionary units sold to eligible households are subject to the following regulations:

- (a) *Principal residence.* Owner shall use and occupy the inclusionary unit as owner's principal place of residence.
- (b) *No rental.* Owner is expressly prohibited from leasing or renting the inclusionary unit unless the City has given its prior written consent to such lease or rental on the basis of a demonstrated hardship by the owner.
- (c) *Annual report.* The City from time to time may require certification of continuing occupancy of the inclusionary unit by owner, which shall be verified by owner to the reasonable satisfaction of City by means of a written report by owner to City setting forth the income and family size of the occupants of the inclusionary unit. Such report shall be submitted to City annually on or about June 30 of each year. Owner shall not be deemed to be in default of the affordable agreement and this program for any failure to deliver such annual report until 30 days after receipt by owner of written notice from City requesting such report. City shall have the option of establishing the type of form to be used for the report.

(Ord. No. 2018-011, § 5, 5-7-18)

## **ARTICLE 8. OCCUPANCY OF VERY LOW- AND LOW-INCOME RENTAL UNITS**

### **Sec. 25.200.810. Occupancy of very low-income rentals.**

Unless determined otherwise by the Community Development Director, all very low-income restricted units required by this program shall be rentals. The developer may rent the unit to an eligible very low-income household or may sell a very low-income restricted unit to an eligible organization, who in turn may rent it to an

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eligible very low-income household. In the event that the very low-income restricted unit is sold to an eligible organization, developer may only charge a sales price consistent with what an eligible very low-income household could be charged for the very low-income restricted unit. Any eligible organization, receiving title to the very low-income restricted unit may sell it to another eligible organization or to an eligible very low-income household in accordance with the City's Affordable Housing Program.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.815. Use and occupancy of low-income rentals.**

The developer may designate and offer low-income units as rentals to an eligible low-income household. Such designation of a unit for rental purposes shall be indicated on the Inclusionary Housing Plan as set forth elsewhere in this chapter. The developer may rent to an eligible low-income household or may sell a low-income restricted unit to an eligible organization, who in turn may rent it to an eligible low-income household. In the event that the low-income restricted unit is sold to an eligible organization, developer may only charge a sales price consistent with what an eligible low-income household could be charged for the low-income restricted unit. Any eligible organization, receiving title to the low-income restricted unit may sell it to another eligible organization or to an eligible low-income household in accordance with the City's Affordable Housing Program.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.820. Establishment of rental rates.**

The maximum allowable rent of inclusionary units will be rents established by the City on an annual basis.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.825. Redesignation of low-income units.**

In the event a developer or eligible organization wishes to change the initial designation of a unit from rental to owner occupancy for the purposes of offering the unit for sale, the City must be sent notice in the manner and form as prescribed by the City's Affordable Housing Program, and the City must have acknowledged said notice prior to the unit being offered for sale.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.200.830. Annual report.**

The owner shall submit an annual report summarizing the occupancy of each rental inclusionary unit for the year. The city may require additional information if deemed necessary. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

(Ord. No. 2018-011, § 5, 5-7-18)

### ***ARTICLE 9. ADJUSTMENTS, WAIVERS***

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**Sec. 25.200.910. General.**

The requirements of this ordinance may be adjusted or waived if the applicant demonstrates to the Community Development Director that applying the requirement of this ordinance would take property in violation of the United States or California Constitutions.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.915. Timing.**

For an adjustment or waiver to be considered, the applicant must apply for the same at the time of a housing approval process application.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.920. Adjustment or waivers.**

If the Community Development Director determines that applying the requirement of this program, considered together with any variances, or regulatory concessions or incentives that may be applied to the proposed residential project, would take property in violation of the United States or California Constitutions, the requirements of this program shall be modified, adjusted or waived to reduce the obligations but only to the extent necessary to avoid an unconstitutional result. If the Director determines no violation of the United States or California Constitutions would occur through application of this ordinance, the requirements of this ordinance remain applicable.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.925. Decision and further appeal.**

The Community Development Director will determine the application and issue a written decision. The Community Development Director's decision may be appealed to the City Council in the manner and within the time set forth in SBMC Sections 24.565.050, 24.565.060 and 24.565.070. Where the phrase "planning commission or design review committee action" is used in these sections, it shall be replaced by the phrase "Community Development Director action" when considering an appeal as provided for herein. In making the determination, the decision-maker shall assume each of the following:

1. Application of the inclusionary housing requirement to the residential development;
2. Application of any applicable inclusionary or density bonus concessions or incentives;
3. Utilization of the most cost-efficient product type for the inclusionary units; and
4. The potential for the external funding, including but not limited to, governmental grants, loans, or subsidies of any nature where reasonably likely to occur.

(Ord. No. 2018-011, § 5, 5-7-18)

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***ARTICLE 10. ADMINISTRATION AND ENFORCEMENT***

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**Sec. 25.200.1010. Program administration.**

The City Manager and the Community Development Director are each hereby given authority to initiate any administrative procedures as may be necessary to implement and carry out the purpose and intent of this Interim Inclusionary Housing Program. When any such administrative procedures have the potential to affect operations or procedures in more than one City department or division, such procedures should be promulgated as "Administrative Policies and Procedures" via the process prescribed therefore by the City Manager. Further, the Director may, in the implementation of this program, develop application forms and submittal requirements reasonably related to the implementation of this program.

Application forms or materials previously approved for use in the Redevelopment Project Area Inclusionary Program may be used or modified as experience dictates by the Community Development Director. Additional forms may be introduced and utilized by the Director as the Director deems may be necessary or desirable. All form changes or administrative procedures initiated by the Director or the City Manager, and all administrative determinations or exercises of delegated authority by the Director, shall be carried out in a manner consistent with, and reasonably related to, the purposes and intent of this program, the housing element and all other elements of the City's General Plan, and the furtherance of state and local housing policies and goals, while respecting at all times the rights of property owners and applicants.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.200.1015. Legal action.**

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance, including:

1. Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval.
2. Actions to recover from any violator of this ordinance, civil fines, restitution to prevent unjust enrichment from a violation of this ordinance, and/or enforcement costs, including attorneys' fees.
3. Eviction or foreclosure.
4. Any other appropriate action for injunctive relief or damages.

Failure of any city official, employee, or agent to fulfill the requirements of this ordinance shall not excuse any person, owner, household, or other party from the requirements of this ordinance.

## **Chapter 25.300 Affordable Housing Program in the Merged San Buenaventura Redevelopment Project Area**

### ***ARTICLE 1. GENERAL PROVISIONS***

**Sec. 25.300.110. Findings.**

The City Council finds that an affordable housing program in the Merged San Buenaventura Redevelopment Project Area is a necessary and desirable program for the following reasons:

1. Affordable housing in downtown is currently regulated by a variety of state and local laws, ordinances, and policies. The City and the San Buenaventura Redevelopment Agency (hereinafter "RDA") have

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developed a Downtown Housing Strategy to facilitate the production of a full spectrum of mixed-use and residential development that is consistent with existing affordable housing regulations and establishes strategies that meet the City's vision for a revitalized downtown.

2. The City Council, through its Two-Year Action Plan; and the RDA through workshops and its Implementation Plan, have both established policies to provide downtown affordable housing that is inclusionary, diverse and dispersed. Moreover, the Implementation Plan calls for the 15 percent affordable housing requirement to be inclusive of a development.
3. In 1997 the City and RDA merged its three project areas, Beachfront, Mission and Downtown into the Merged San Buenaventura Redevelopment Project Area ("Merged Area"). The boundaries of the Downtown Specific Plan fall within the Merged Area.
4. Redevelopment Law (Health & Safety Code Section 33413) requires that at least 15 percent of all new or substantially rehabilitated units developed in redevelopment areas by a public or private entity must be affordable to very low, low and moderate-income households. It is further required that a minimum of 40 percent of the 15 percent requirement must be affordable to very low-income households. The law currently requires that affordability covenants be recorded in the chain of title for each unit and that the units remain affordable for a minimum of 55 years for rental units and 45 years for owner-occupied units.
5. The RDA's Implementation Plan states that the housing provided in the Merged Area will comply with these requirements. The RDA's February 2003 update of the five-year implementation plan stated that the policy of the RDA was to have affordable housing that was inclusionary, dispersed and diverse. To meet this goal all new housing developments in the Merged Area will have to meet the 15 percent requirement.
6. The City's Housing Element reports that in 2000 the County median income was \$60,785.00. Yet, approximately 23 percent of Ventura households were in the moderate-income range (81 to 120 percent of median family income or MFI), 19 percent were in the low range (51 to 80 percent of MFI), and 23 percent of households were in the very low range (0 to 50 percent of MFI).
7. The Regional Housing Needs Assessment (RHNA) has established that the City's Housing Production allocation requires the development of 2,125 new affordable housing units as follows: 673 units (32 percent) are needed for moderate-income, 591 units (28 percent) are needed for low-income, and 861 units (40 percent) are needed for very low-income during the current 2014-2021 allocation cycle.
8. The City's downtown core is within the Merged Area and is being revitalized with new commercial and housing developments. A goal of the City's Downtown Specific Plan is to encourage residential development "to support the creation of a Downtown Core that is active throughout the day and evening, and to support the local-serving character of the Downtown Core." Thus, the City seeks to create a lively and livable community with a full spectrum of mixed-use and housing opportunities. Creating a healthy, sustainable mix of residential opportunities involves including a diverse range of housing types within each project and projects spread throughout the Downtown area.
9. The City Council further finds that the City of San Buenaventura faces a lack of access to decent, affordable housing, which has a direct impact upon the health, safety and welfare of its residents.
10. The Merged Area is within the Coastal Zone. Government Code Section 6559 requires that new housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income.
11. This Ordinance adopts a 15-percent affordable inclusionary housing requirement for all new housing developments in the Merged Project Area to codify the RDA's current practices, to ensure compliance with Redevelopment Law, to implement at the local level the requirements of inclusionary affordable

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housing in the coastal zone, to contribute to meeting the City's overall need of affordable housing and to help meet its RHNA allocations.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.115. Purpose and intent.**

The purpose of this Ordinance is to:

1. Ensure the development and availability of decent, affordable housing to a broad range of households with varying income levels within the Merged Area as mandated by State Law.
2. Promote the City's goal to add affordable housing units to the City's housing stock.
3. Codify the RDA goal that affordable housing should be inclusionary, dispersed, and diverse by adopting the 15 percent affordable Inclusionary requirement for each development. This ensures that affordable housing will be dispersed throughout the downtown, throughout each project and not be segregated.
4. Ensure the long-term affordability of units and availability for income eligible households in years to come.

(Ord. No. 2018-011, § 5, 5-7-18)

## **ARTICLE 2. DEFINITIONS**

### **Sec. 25.300.210. Definitions.**

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

1. *Affordable Rent.* Affordable Rent herein shall have the same meaning as specified in Health and Safety Code Section 50053.
2. *Affordable Housing Cost.* A sales price that results in a monthly housing cost (including mortgage, insurance, utilities, rubbish collection costs and home association costs, if any) that does not exceed the amounts specified in Health and Safety Code Section 50052.5, subsection (b)(2)–(4).
3. *Area Median Income.* The median Household income as provided in Health and Safety Code Section 50093(c).
4. *Household.* One person living alone or two or more persons sharing residency whose income is considered for housing payments.
5. *Executive Director.* The RDA's Executive Director or designee.
6. *Inclusionary Unit.* A dwelling unit that must be offered at Affordable Rent or available at an Affordable Housing Cost to Moderate-, Low- and Very Low-Income Households.
7. *Low-Income Household.* A Household whose annual income does not exceed the qualifying limits set for "lower income households" in Health and Safety Code Section 50093.
8. *Market-rate Unit.* A dwelling unit in a residential development that is not an Inclusionary Unit.
9. *Moderate-Income Household.* A Household whose income does not exceed the qualifying limits set for "persons and families of low- or moderate-income" in Health and Safety Code Section 50093.

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10. *Very Low-Income Household*. A Household whose income does not exceed the qualifying limits set for "very low-income households" in Health and Safety Code Section 50105.

(Ord. No. 2018-011, § 5, 5-7-18)

### **ARTICLE 3. INCLUSIONARY HOUSING PROGRAM**

#### **Sec. 25.300.310. Inclusionary requirement.**

For all new residential developments of seven or more units in the Merged Area, at least 15 percent of the total units must be Inclusionary Housing Units (Inclusionary Units) restricted for occupancy by Moderate-, Low-, or Very Low-Income Households ("Program"). The number and type of Inclusionary Units required for a particular project will be determined at the time of granting housing allocations under the City's Residential Growth Management Program (RGMP) and the requirement will be a condition to the grant of any RGMP allocation.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.315. Type of inclusionary units.**

Except as provided herein, at least 40 percent of the Inclusionary Units must be restricted to very low-income households. The remainder (or 60 percent) may be restricted to moderate- or low-income households. Notwithstanding the foregoing, the Community Development Director may approve an Inclusionary Housing Plan for a new residential development with a lesser percentage of units restricted to very-low income households and a greater percentage restricted to moderate or low income households, provided that (1) at least 15 percent of the total units in the new development are Inclusionary Housing Units as required by Section 25.300.310 and (2) the Council finds that at least 40 percent of the total number of Inclusionary Housing Units developed in the Merged Project Area since the original adoption of this Chapter have been restricted to Very-Low Income Households.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.320. Calculation.**

For purposes of calculating the number of Inclusionary Units required, any additional units authorized as a density bonus under the City Density Bonus Ordinance will not be counted in determining the required number of Inclusionary Units. In determining the number of Whole Inclusionary Units required, any decimal fraction of 0.5 or greater shall be rounded up to the nearest whole number. Any decimal fraction less than 0.5 shall be rounded down to the nearest whole number. Notwithstanding the foregoing in determining the number of whole very low-income household Inclusionary Units, any decimal fraction of one-tenth or greater shall be rounded up to the nearest whole number. For example: if the decimal fraction for the number of very low-income units is 1.2 then two very low-income units will be required, but if the decimal fraction for the number of very low-income units is 3.03, then three very low-income units will be required.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.325. Duration of affordability requirement.**

Inclusionary Units produced under this Program must be legally restricted to: occupancy by Households of the income levels for which the units were designated for the minimum period provided for in Redevelopment Law, California Health and Safety Code, at the time of entering into the Affordable Housing Agreement as required

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herein (hereinafter "Duration Period"). Currently the minimum period is 55 years for rental units and 45 years for owner occupied units. To ensure compliance with the durational requirement, affordability covenants shall be recorded in the chain of title for each Inclusionary Unit as provided in Section 25.300.635, Recording of Affordable Housing Agreement.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.330. Design.**

Unless otherwise specified in an Affordable Housing Agreement, Inclusionary Units must be dispersed throughout a residential development and be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the Market-rate Units. Inclusionary Units may be smaller in aggregate size and have different interior finishes and features than Market-rate Units, so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.335. Timing.**

All Inclusionary Units must be constructed and occupied concurrently with or prior to the construction and occupancy of Market-rate Units. In phased developments, Inclusionary Units may be constructed and occupied in proportion to the number of units in each phase of the Residential Development.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.340. Access to common amenities.**

Residents and tenants of Inclusionary Units shall be provided the same rights and access to common amenities in the development project as residents and tenants occupying Market-rate Units.

(Ord. No. 2018-011, § 5, 5-7-18)

#### **Sec. 25.300.345. Implementation and compliance monitoring fees.**

- (a) The City Council may, by resolution, establish fees and deposits for the reasonable cost of preparing documents and processing applications as required for the inclusionary housing program established pursuant to this Chapter.
- (b) The City Council may, by resolution, additionally establish compliance monitoring fees to recover the City's reasonable costs for ongoing implementation of this Chapter. The City Council shall establish separate compliance monitoring fees for owner-occupied and rental inclusionary units.

(Ord. No. 2018-011, § 5, 5-7-18)

### ***ARTICLE 4. EXEMPTIONS***

#### **Sec. 25.300.410. Exemptions.**

The requirements of the Program do not apply to:



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1. Residential developments of six housing units or less.
  2. Developments that already have more units that qualify as affordable to Moderate-, Low- and Very Low-Income Households than this Ordinance requires.
  3. The reconstruction of any structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of residential units by seven or more.
  4. Residential building additions, repairs or remodels; provided that such work does not increase the number of existing units to seven or more units.

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 5. INCENTIVES AND ASSISTANCE***

### **Sec. 25.300.510. Request for incentives.**

The applicant for a residential development subject to this Program may request the incentives in Section 25.300.515, Refund of Fees for Inclusionary Units, and City shall grant the same to developer.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.515. Refund of fees for inclusionary units.**

A pro-rata refund of the following fees for each of the Inclusionary Units in the residential development will be granted to the Developer upon recordation of the Affordable Housing Agreement as required by Section 25.300.635, Recording of Affordable Housing Agreement:

Planned Development Permit Fees

Use Permit Fees

Variance Fee

Coastal Development Permit Fee

Tentative Subdivision Map Fee

Design Review Fee

RGMP Allocation Process Fee

Downtown Specific Plan Additional Use Permit Fee

Density Review Fee

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 6. COMPLIANCE PROCEDURES***

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**Sec. 25.300.610. General.**

No residential development subject to this Program shall be deemed approved without approval of an Inclusionary Housing Plan and approval of an Affordable Housing Agreement as provided herein.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.615. RGMP allocations.**

A residential development subject to this Program shall include, as a part of its RGMP application, the number and type of Inclusionary Units required by the Program. The granting of the RGMP allocations will specify the number and type of Inclusionary Units required by the Program and shall further condition the granting of RGMP allocations by requiring the approval of an Affordable Housing Agreement as provided for herein.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.620. Inclusionary housing plan.**

The Applicant for a residential project subject to the Program shall submit an Inclusionary Housing Plan concurrently with its application for any discretionary planning approvals and/or design review approval (hereinafter collectively referred to as "Discretionary Approvals"). The Inclusionary Housing Plan must include:

1. The location, type of structure (attached, semi-attached, or detached) and size of the proposed Market-rate and Inclusionary Units.
2. A site plan depicting the location of the Inclusionary Units.
3. A floor plan and elevations of the proposed Inclusionary Units.
4. The income levels to which each Inclusionary Unit will be made affordable.
5. For phased Development, a phasing plan that provides for the timely development of the number of Inclusionary Units proportionate to each proposed phase of development.
6. A request for any incentives pursuant to Section 25.300.510.
7. Any other information reasonably requested by the Executive Director to assist with evaluation of the Plan under the requirements of this Ordinance.
8. Acknowledgement that an instrument as specified by City restricting the Inclusionary Unit(s) as affordable shall be recorded against each Inclusionary Unit and that a recordable Affordable Housing Agreement shall be entered into by the Applicant and any other necessary party.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.625. Approval of inclusionary housing plan.**

The Executive Director must approve, conditionally approve, or reject the Inclusionary Housing Plan within 60 days of the date that the Inclusionary Housing Plan is deemed complete by the Executive Director. If the Inclusionary Housing Plan is incomplete, the Inclusionary Housing Plan will be returned to the Applicant along with a list of the deficiencies or the information required. An application for Discretionary Approvals from a residential development subject to this Ordinance will not be deemed complete until a complete Inclusionary Housing Plan is submitted to the City. At any time during the review process, the Executive Director may require from the

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Applicant additional information reasonably necessary to clarify and supplement the Inclusionary Housing Plan or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this Ordinance.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.630. Affordable housing agreement.**

The forms of the Affordable Housing Agreement, resale and rental restrictions, deeds of trust, and other documents authorized by this section shall be designated and approved by the Executive Director and approved as to form by the RDA's attorney prior to being executed with respect to any residential development subject to this Program. The form of the Affordable Housing Agreement will vary depending on the manner in which the provisions of this Ordinance are satisfied for a particular development. All Affordable Housing Agreements must include, at minimum, the following:

1. Legal Description of the property.
2. Project description including number of Inclusionary Units to be provided, identification of specific lots and/or units to be designated the Inclusionary Units and the type of each, the size of each Inclusionary Unit, and whether the Inclusionary Units will be rented or owner-occupied.
3. Inclusionary incentives by the City (if any), including the nature and amount of any local public funding.
4. Provisions and/or documents for resale restrictions, rental restrictions or deeds of trust.
5. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident Households for income eligibility.
6. Any other provision deemed necessary by the Executive Director for compliance with this Program.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.635. Recording of affordable housing agreement.**

Affordable Housing Agreements approved by the Executive Director must be recorded against owner-occupied Inclusionary Units and residential projects containing rental Inclusionary Units. Additional rental or resale restrictions, deeds of trust, and/or other documents specified by the Executive Director must also be recorded against owner-occupied Inclusionary Units.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.640. Building permits.**

The City shall not issue a building permit for a residential development subject to this Program without an Affordable Housing Agreement executed by the owner, the Applicant (if not the owner) and the Executive Director, and approved as to form by the RDA's attorney, and recorded against the property.

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 7. RESTRICTIONS ON OWNER-OCCUPIED UNITS***

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**Sec. 25.300.710. Initial sales price and resale.**

The initial sales price and resale price of the Inclusionary Unit must be set so that the eligible Household will pay an Affordable Housing Cost.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.715. Transfer.**

Renewed restrictions will be entered into on each change of ownership, to maintain the Duration Period on the Inclusionary Unit prior to the expiration of the affordability period provided in Section 25.300.325.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.720. Changes in title.**

Title in the Inclusionary Unit may change due to changes in circumstance, including death, marriage, and divorce. Except as otherwise provided by this Section, if a change in title is occasioned by events that changes the financial situation of the Household so that it is no longer income-eligible, then the property must be sold to an income-eligible Household within 180 days. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant without respect to the income-eligibility of the Household. Upon the death of a sole owner or all owners and inheritance of the Inclusionary Unit by a non-income-eligible child or stepchild of one or more owners, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible Household. Inheritance of an Inclusionary Unit by any other person whose Household is not income-eligible shall require resale of the unit to an income-eligible Household as soon as is feasible but not more than 180 days from when the estate is settled.

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 8. RESTRICTIONS ON RENTAL UNITS***

**Sec. 25.300.810. General.**

Rental units will be offered to eligible Households at an Affordable Rent. The owner of rental Inclusionary Units shall certify each tenant Household's income to the City or designee at the time of initial rental and annually thereafter. The owner must obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year, and submit such information on a form approved by the City.

(Ord. No. 2018-011, § 5, 5-7-18)

**Sec. 25.300.815. Annual report.**

The owner shall submit an annual report summarizing the occupancy of each rental Inclusionary Unit for the year and demonstrating the continuing income-eligibility of the tenant. The City may require additional information if deemed necessary.

(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 9. ADJUSTMENTS, WAIVERS***

### **Sec. 25.300.910. General.**

The requirements of this Ordinance may be adjusted or waived if the Applicant demonstrates to the Executive Director that applying the requirement of this Ordinance would take property in violation of the United States or California Constitutions.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.915. Timing.**

For an adjustment or waiver to be considered, the Applicant must apply for the same at the time of RGMP application.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.920. Considerations.**

In making a determination on an application to adjust or waive the requirements of this Ordinance, the Executive Director may assume each of the following when applicable: (i) that the Applicant is subject to the inclusionary housing requirement; (ii) the extent to which the Applicant will benefit from inclusionary incentives offered herein; (iii) that the Applicant will be obligated to provide the most economical Inclusionary Units feasible in terms of construction, design, location and tenure; and (iv) that the Applicant is likely to obtain other housing subsidies where such funds are reasonably available.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.925. Adjustment or waivers.**

If the Executive Director determines that applying the requirement of this Ordinance would take property in violation of the United States or California Constitutions, the requirements of this Ordinance shall be modified, adjusted or waived to reduce the obligations to the extent necessary to avoid an unconstitutional result. If the Executive Director determines no violation of the United States or California Constitutions would occur through application of this Ordinance, the requirements of this Ordinance remain applicable.

(Ord. No. 2018-011, § 5, 5-7-18)

### **Sec. 25.300.930. Decision and further appeal.**

The Executive Director, will determine the application and issue a written decision. The Executive Director's decision may be appealed to the City Council in the manner and within the time set forth in SBMC Section 24.565.050, 24.565.060 and 24.565.070. Where the phrase "planning commission or design review committee action" is used in these Sections, it shall be replaced by the phrase "Executive Director action" when considering an appeal as provided for herein.

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(Ord. No. 2018-011, § 5, 5-7-18)

## ***ARTICLE 10. ENFORCEMENT***

### **Sec. 25.300.1010. Legal action.**

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Ordinance, including:

1. Actions to revoke, deny or suspend any permit, including a Building Permit, certificate of occupancy, or discretionary approval.
2. Actions to recover from any violator of this Ordinance civil fines, restitution to prevent unjust enrichment from a violation of this Ordinance, and/or enforcement costs, including attorney's fees.
3. Eviction or foreclosure.
4. Any other appropriate action for injunctive relief or damages.

Failure of any City or RDA official, employee, or agent to fulfill the requirements of this Ordinance shall not excuse any person, owner, Household, or other party from the requirements of this Ordinance.

(Ord. No. 2018-011, § 5, 5-7-18)